IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1281 of 1999
AND
LETTERS PATENT APPEAL NO 1282 OF 1999

WITH

CIVIL APPLICATION NO. 10840 OF 1999
AND
CIVIL APPLICATION NO. 10842 OF 1999

in

SPECIAL CIVIL APPLICATIONNo 96 of 1996

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI and

MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATWARLAL MAHIJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MC BHATT for Appellant in both the appeals and CAs

Ld. AGP Mrs. Manisha Lavkumar for respondents in both the appeals and CAs.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI and
MR.JUSTICE C.K.THAKKAR

Date of decision: 27/01/2000

COMMON ORAL JUDGEMENT

Per: C.K. Thakkar, J:

1. Both these appeals arise out of a judgment and order passed by the learned Single Judge in Special Civil Application No. 96 of 1996 decided on August 11, 1999, and in Misc. Civil Application No. 1628 of 1999 decided on September 10, 1999.

2. The appellant was the original petitioner. Being aggrieved by the order passed by the Competent Authority declaring certain lands as "vacant land" under the Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as the 'Act' for short), he filed an appeal before the Urban Land Tribunal. The Tribunal allowed the appeal of the appellant, set aside the order passed by the Competent Authority and remanded the matter to the Competent Authority to decide the same in accordance with law. It appears that, being aggrieved by the order passed by the Tribunal, State of Gujarat preferred Special Civil Application No. 96 of 1996. When the matter came up for hearing, the learned Single Judge observed that a statement was made on behalf of the petitioner State that, the order of the Competent Authority at Annexure-B to the petition had already been implemented before the order was passed in appeal at Annexure-A by the Tribunal. The learned Single Judge therefore, observed:-

" As a result of the implementation of the order of the Competent Authority, further proceedings followed, that notification under section 10(3) was published, procedure under section 10(5) was followed, possession under section 10 (6) was taken and even thereafter the proceedings under section 11 were maintained ".

3. The learned Single Judge further stated:-

" Even otherwise, the impugned order of the appellate tribunal merely remands the matter back to the Competent Authority for reconsideration. Even if the impugned order is sustained, the same cannot now be implemented inasmuch as the Act of 1976 has been repealed. On the other hand, if the impugned order is bad in law and the court finds it so, the order passed by the Competent Authority would be required to be upheld, which in any case, factually, the petitioner State of Gujarat has already implemented. "

4. The appellant petitioner filed Misc. Civil Application for review of the order passed by learned Single Judge. When the review was placed for hearing, the learned Single Judge observed that the facts stated in the order passed in the main matter were clear and it was not necessary to entertain review petition, and accordingly it was dismissed. Both these orders are challenged in these LPAs.

Admitted. Mrs. Manisha Lavkumar, learned Asst. Govt. Pleader appears for the respondents.

5. We have heard learned counsel Mr. M.C. Bhatt for the appellants and also learned AGP Mrs. Manisha Lavkumar for respondents.

6. Mr. Bhatt submitted that, learned Single Judge has committed an error of law and of jurisdiction in not entertaining the petition and not deciding it on merits. He submitted that, had the Act been not repealed, the matter could have been heard and decided on merits and an appropriate order ought to have been passed by the learned Single Judge. Repeal of the Act may or may not favour the appellant, but it would never go against the petitioner-appellant and in coming to the conclusion that the matter had become infructuous. It was required to be decided on merits. If the order passed by the Tribunal was in accordance with law and the proceedings were pending, they were required to be decided in accordance with the Act. Since it was not done, learned Single Judge has committed an error of law. The learned counsel also submitted that, since the Act was repealed by a Notification dated March 30, 1999, the question was required to be gone into by the learned Single Judge on merits. By not doing so, an error of jurisdiction is committed by the learned Single Judge.

7. In the facts & circumstances of the case, and without expressing any opinion one way or the other on the merits of the matter, in our opinion, the order passed by the learned Single Judge in the main matter as well as the Review Application deserve to be quashed and set aside. The legality and validity of the order passed by the Tribunal will have to be decided in the light of the facts on record, as also considering the fact that the Act stood repealed on 30th March 1999 only.

8. Both the appeals are accordingly allowed. The orders passed by the learned Single Judge are hereby set aside. The matter will now go back before the learned Single Judge. We may state that, we have not gone into the merits of the matter. As and when the mater is placed before the learned Single Judge, he will decide the same, without being influenced by the orders in the main matter, and in the review application and also of the present order. Contentions of all the parties are left open to be agitated before the learned Single Judge.

9. Appeals are accordingly allowed to the extent indicated above. Ad-interim relief granted earlier shall continue till the learned Single Judge decides the matter. No order as to costs.

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